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October 6, 2006

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: February 23, 2006

Case Number: TSO-0361

This Decision concerns the eligibility of XXXXXXXX XXXXX XXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual should be granted an access authorization. As set forth in this Decision, I have determined that the individual should be granted a security clearance.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

The individual requested a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his request for an access authorization was being denied pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on August 25, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections f, h and j. More specifically, the Notification Letter alleges that the individual has: 1) "[d]eliberately misrepresented, falsified, or omitted significant information from . . . a Questionnaire for National Security Positions . . . on a matter regarding eligibility for DOE access authorization," 10 C.F.R. § 710.8(f) (Criterion F); 2) "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability [of the individual]"; and 3) "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. §§ 710.8(f), (h) and (j) (Criterion F, Criterion H and Criterion J, respectively). The bases for these findings are summarized below.

In reference to Criterion F, the Notification Letter states that in two separate Questionnaires for National Security Positions (QNSP), dated August 25, 2000 and January 16, 2004, the individual answered "no" to a question whether he had ever been charged or convicted with an offense related to alcohol or drugs. However, when confronted with discrepant information during a Personnel Security Interview (PSI) conducted on October 12, 2004, the individual admitted to having four alcohol-related arrests between 1991 and 2003.

With regard to Criteria H and J, the Notification Letter states that on April 25, 2005, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who issued a report in which he diagnosed the individual with Substance Dependence, Alcohol, with Physiological Dependence, based upon diagnostic criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR). According to the DOE Psychiatrist, this is a mental condition that causes or may cause a significant defect in the individual's judgment or reliability. The DOE Psychiatrist further determined that the individual has been a user of alcohol habitually to excess.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on February 23, 2006, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On February 27, 2006, I was appointed as Hearing

Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Counsel called the DOE Psychiatrist as DOE Security's sole witness. Apart from testifying on his own behalf, the individual called a close friend, his supervisor and his psychiatrist as witnesses. The transcript taken at the hearing will be hereinafter cited as "Tr." Various documents that were submitted by the DOE Counsel will be cited as "DOE Exh." and those submitted by individual cited as "Ind. Exh."

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position with a DOE contractor in October 2003 and in January 2004, the individual submitted a Questionnaire for National Security Positions (QNSP) to request a security clearance. In the QNSP, the individual indicated that there were criminal charges pending against him relating to an arrest in October 2003 on charges of Assault, Disobeying an Officer and Disorderly Conduct. The individual answered "no" to question #23d of the QNSP, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" During the subsequent background investigation of the individual, however, information was received by DOE Security indicating that the individual's answer to this question was not accurate. The individual was therefore summoned to submit to a PSI, conducted on October 12, 2004. Following is a summary of the information provided by the individual during the PSI regarding his alcohol-related arrests.

The Personnel Security Specialist initially questioned the individual about his October 2003 arrest that he acknowledged in his QNSP. The individual explained that on this occasion, he consumed two beers with dinner at a restaurant before going to a nightclub where he consumed two additional beers and three martinis with a group of friends. Upon leaving the nightclub between 11:30 p.m. and midnight, the individual observed a disturbance on the other side of the street in which the police were making a forcible arrest. A uniformed officer approached the individual and his friends and ordered them to disperse. The individual's judgment was admittedly impaired by alcohol and he did not immediately comply, but instead asked the officer why he had to leave if he wasn't doing anything. The police officer responded by pepper spraying, cuffing and arresting him. According to the individual, he began coughing and spitting, and was struggling to wipe his face in reaction to the pepper spray, but he did not resist arrest or push the arresting officer. However, the individual was charged with Assault in addition to Disobeying an Officer and Disorderly Conduct. The police officer later decided not to pursue the charges and the case was ultimately dismissed.

During the PSI, the Personnel Security Specialist asked the individual if he had any other problems with the law relating to alcohol. The individual responded that he had not, but then was confronted with information that he had an alcohol-related arrest in September 1993 while serving in the military. The Personnel Security Specialist asked why the individual had not admitted this arrest when asked about prior alcohol-related arrests, or revealed the arrest on his QNSP. The individual stated that it was his understanding that he was only required to disclose such incidents which occurred in the preceding seven years. However, upon being informed that he was required to disclose all alcohol-related charges, the individual responsively described three alcohol-related arrests which occurred while the individual was in the military from 1990 to 2000, including an arrest in 1997 that was previously unknown to DOE Security.

First, in 1991, the individual was arrested on a charge of Driving Under the Influence (DUI) following an incident in which the individual consumed eight to ten glasses of free beer being serving at an enlisted men's facility on the military base where he was stationed. According to the individual, he was arrested while sitting in his vehicle listening to the radio. The individual stated that he was observed by a military police officer who approached the vehicle and determined that the individual was in an intoxicated condition. The individual was informed by the military police officer that although the individual was not driving, he could be charged for DUI for having the keys in the ignition. After being arrested, the individual was given a breathalyzer test which showed that the individual was above the legal limit to drive. As a result of this arrest, the individual received an Article 15 (military non-judicial punishment) pursuant to which his rank was reduced, he received extra duty and he was required to attend a six-month alcohol awareness program.

In 1993, the individual was arrested outside a military barracks nightclub after trying to intervene when the military police were in the process of arresting his friend on a sexual assault charge, which the individual believed was based on false information. The individual began to question the military police officer arresting his friend, which the officer perceived as disrespecting his authority. The individual was arrested on a charge of Drunk and Disorderly. The individual admitted during his PSI that he had consumed approximately eight beers prior to the arrest but informed the Personnel Security Specialist that he did not feel intoxicated at the time due to his high tolerance for alcohol developed while in the military. The individual stated that during this time period, he drank an average of six or seven beers on either Friday or Saturday night every weekend. Pursuant to the 1993 arrest, he received an oral reprimand and an Article 15 under which he received extra duty and had his liberties restricted for five days.

In 1997, the individual was again arrested while stationed overseas after consuming three 12-ounce rum and cokes at a nightclub and being involved in a fender bender with a civilian when driving back to the military base. The tire of the individual's jeep

was punctured in the accident and the individual left the vehicle and rode back to the base with a friend. However, the individual was arrested at the barracks by the military police after they received a report, apparently from the civilian authorities, that the individual had left the scene of the accident. The military police administered a breathalyzer test upon taking the individual into custody and found him to be over the legal limit to drive. However, the individual was not charged with DUI. Instead, the individual received an Article 15 letter of reprimand and two weeks extra duty. According to the individual, his commanding officer agreed to take the letter of reprimand out of the individual's military records following the completion of his extra duty assignment.

Following the PSI, DOE Security determined that the security concerns associated with the individual's use of alcohol were unresolved, and therefore referred the individual to the DOE Psychiatrist for an evaluation. The DOE Psychiatrist reviewed the individual's personnel security file and performed a psychiatric interview of the individual on April 25, 2005. In his report issued on May 7, 2005, the DOE Psychiatrist set forth his opinion that the individual meets the DSM-IV TR criteria for Substance Dependence, Alcohol (Alcohol Dependence), with Physiological Dependence. The DOE Psychiatrist further states in his report that the individual's Alcohol Dependence is an illness which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In this regard, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence from alcohol and non-prescribed controlled substances for two years with 200 hours of attendance at Alcoholics Anonymous (AA) with a sponsor over a minimum of two years, or 2) total abstinence for three years with satisfactory completion of a professionally led, alcohol treatment program, with aftercare, over a minimum of six months. As adequate evidence of reformation, the DOE Psychiatrist recommended two or three years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if he does not.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See Personnel Security Hearing, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be

clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual should be granted an access authorization since I conclude that such granting would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

#### A. Criterion F, Falsification

The Notification Letter initially alleges security concerns under Criterion F, based upon the individual answering "no" to question #23d of his January 2004 QNSP, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" See DOE Exh. 14.<sup>2/</sup> The individual listed the October 2003 arrest for Assault,

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<sup>2/</sup> The Notification Letter also sets forth charges under Criterion F that the individual concealed his alcohol-related arrests on a QNSP, dated January 25, 2000, submitted to the Department of Defense (DOD) in the process of seeking employment with that agency, and also on a DOD Questionnaire dated October 26, 2001. See DOE Exh. 1 (Statement of Charges); cf. DOE Exhs. 10 and 15. As I pointed out to DOE Counsel at the hearing, however, these matters should not have been listed under Criterion F which encompasses "a Questionnaire for National Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization . . ." 10 C.F.R. § 710.8(f) (emphasis added). The DOE Counsel concurred that these allegations should not have been included with the charges under Criterion F. Tr. at 79-80. I will therefore not  
(continued...)

Disobeying an Officer and Disorderly Conduct, but did not reveal his prior three alcohol-related arrests while in the military, in 1991, 1993 and 1997, until confronted at his October 2004 PSI with information received by DOE Security about the 1993 arrest. See DOE Exh. 16 at 39-40.

While the individual has proffered an explanation for withholding this information on his QNSP, I find that DOE Security correctly invoked Criterion F in this case. The deliberate withholding of significant information raises serious issues with regard to the individual's honesty, reliability and trustworthiness. Tr. at 35. As observed in similar cases, the DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. See, e.g., Personnel Security Hearing, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,515 (1995); Personnel Security Hearing, Case No. VSO-0281, 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000). I will therefore turn to whether the individual has presented sufficient mitigating evidence to overcome these security concerns.

When confronted during the PSI, the individual immediately gave the explanation that he believed that he was only required to list alcohol-related incidents that occurred during the preceding seven years. See DOE Exh. 16 at 40-41. After being informed that DOE Security was concerned with all alcohol-related incidents, the individual was very responsive in describing his three alcohol-related arrests while he was serving in the military. *Id.* at 39-48, 51-67, 68-84. In this regard, the individual was forthcoming in describing his 1997 arrest which did not appear in the individual's military record and was previously unknown to DOE Security. Tr. at 76.

At the hearing, I found the individual sincere and forthright, and he appeared to be truthful in testifying that he did not intentionally try to deceive DOE Security in not disclosing his three alcohol-related arrests while serving in the military. Tr. at 49-50. The individual stated that he did not list the 1991 and 1993 arrests on the QNSP since they were beyond seven years, and that he did not list the 1997 arrest, which was barely within the seven-year period, because he was not charged with an offense and was assured by his commanding officer that the incident had been expunged from his military record. *Id.*

Having duly considered this matter, I have determined that the individual has sufficiently mitigated the concerns of DOE Security under Criterion F. I find it plausible that the individual was confused with regard to whether he was required to disclose arrests while in the military which occurred more than seven years ago. While question #23d of the QNSP requires the individual to list all alcohol-related offenses,

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2/ (...continued)  
consider these allegations in this decision.

the very next question #24d, asks “In the last 7 years, have you been subject to a court martial or other disciplinary proceedings under the Uniform Code of Military Justice?” I note that the individual did list the October 2003 arrest in his QNSP, and has been readily forthcoming in describing his alcohol-related arrests since being informed of the requirement during the PSI, as well as during his psychiatric interview and at the hearing. The circumstances of this case and the manner in which the individual has responded lead me to accept his assertion that he did not intentionally withhold information from his QNSP to deceive or mislead DOE Security.

## B. Criteria H & J; Mental Conditions, Use of Alcohol

### (1) Derogatory Information

In his report, the DOE Psychiatrist diagnosed the individual with Alcohol Dependence based upon diagnostic criteria set forth in the DSM-IV TR. DOE Exh. 6 at 21-22. The DSM-IV TR provides that a diagnosis of Alcohol Dependence is supported when the individual manifests three or more of the following behaviors occurring at any time within the same twelve-month period: 1) increased tolerance, 2) withdrawal, 3) alcohol often consumed in larger amounts or over a longer period than intended; 4) persistent desire or unsuccessful efforts to cut down, 5) great deal of time spent in activities to obtain alcohol; 6) important social, occupational, or recreational activities given up or reduced; and 7) continued use despite physical or psychological problem caused or exacerbated by alcohol. See *id.* at 21 (Criteria 1 through 7). Based upon his examination of the individual’s security file and psychiatric interview, the DOE Psychiatrist determined that the individual met Criteria 1, 3, 4 and 7 in 1997, when the individual’s drinking was at its height while he was stationed overseas in the military. *Id.* at 22. The individual has admitted that there were times that he drank excessively while in the military, on many weekends while off duty. See DOE Exh. 16 (PSI) at 90-92; Tr. at 55, 58. The individual further acknowledges that he has had four alcohol-related arrests, in 1991, 1993, 1997 and 2003. Tr. at 41-47.

In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., Personnel Security Hearing, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0014, *aff’d*, Personnel Security Review, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). As observed in these cases, an individual’s excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. In the present case, the DOE Psychiatrist’s diagnosis of Alcohol Dependence is coupled with his finding that from 1990 to 1997, the individual was a user of alcohol habitually to excess. DOE Exh. 6 at 23.



Based upon the diagnosis and findings of the DOE Psychiatrist, I find that DOE Security properly invoked Criteria H and J in denying the individual's request for a security clearance. Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE.

## (2) Mitigating Evidence

At the hearing, the individual presented the testimony of his own psychiatrist (Individual's Psychiatrist) who, based upon his evaluation of the individual, strongly disagreed with the DOE Psychiatrist's diagnosis of Alcohol Dependence. The Individual's Psychiatrist acknowledged that during his period of heaviest drinking while in the military in 1997, the individual may have met the criteria for a "low-grade alcohol dependence." Tr. at 105; see Tr. at 119. However, the Individual's Psychiatrist was adamant that the more appropriate diagnosis for the individual at that time would have been Alcohol Abuse,<sup>3/</sup> using sound "clinical judgment." Tr. at 105, 120. According to the Individual's Psychiatrist, the individual was never a "full-blown alcoholic or fully addicted" and his diminishing use of alcohol since leaving the military demonstrates that Alcohol Abuse would be the appropriate diagnosis, rather than Alcohol Dependence. Tr. at 94, 122. The Individual's Psychiatrist emphasized that the individual has controlled his drinking since getting out of the military in 2000, and expressed his view that the individual's December 2003 alcohol-related arrest was "an aberration." Tr. at 170.

The Individual's Psychiatrist also strongly disagreed with the DOE Psychiatrist that the individual is at risk of a relapse into problematic drinking, as well as with the DOE Psychiatrist's recommendations for rehabilitation and reformation. The Individual's Psychiatrist noted that the individual has been abstinent since April 2005, two weeks before he was evaluated by the DOE Psychiatrist, thus giving the individual 15 months of sobriety at the time of the hearing. Tr. at 100. After meeting with the individual twice in March 2006, the Individual's Psychiatrist recommended to the individual that he begin attending AA meetings. Tr. at 90. The Individual's Psychiatrist clarified, however, that he did not recommend AA because he considered the individual to have a serious alcohol problem but advised the individual that "for purposes of your clearance, it may become important just to go and to know what it's about." Id. The individual complied with this request and had attended approximately 10 AA meetings

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<sup>3/</sup> The *DSM-IV TR* generally provides that a diagnosis of Alcohol Abuse is supported when the individual manifests one of four behaviors within a twelve-month period: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems.

and at the time of the hearing and already obtained an AA sponsor. Tr. at 104, 113; Ind. Exh. G. The Individual's Psychiatrist stated that this shows that the individual is willing to do whatever is asked of him to alleviate the concerns about his past use of alcohol. Tr. at 108.<sup>4/</sup>

The Individual's Psychiatrist concluded that there is "not a risk at all" of the individual returning to alcohol abuse, stating that "I would be very surprised if he had any future alcohol-related legal events. I would be very surprised if he drank again." Tr. at 96-97. When later asked to assess the probability that the individual will go back to drinking, the Individual's Psychiatrist responded "Zero." Tr. at 113. At the hearing, the DOE Psychiatrist explained his reasons for diagnosing the individual with Alcohol Dependence, and asserted his view that it is "more likely than not" that the individual will relapse into drinking in the next five years in the absence of the programs of rehabilitation or reformation outlined in his report. Tr. at 146. However, for the reasons below, I find that the record more fully supports the opinion of the Individual's Psychiatrist that the individual suffered from Alcohol Abuse while in the military and that the individual has now achieved adequate reformation from this condition.

First, the record supports a finding that while the individual drank excessively on many weekends with his military companions, particularly from 1994 to 1997 when stationed overseas, his drinking did not reach a level of dependent use having a deleterious effect on the performance of his duties. See Tr. at 52-55, 58. The individual ended his career at the rank of sergeant, and the individual's honorable discharge papers submitted at hearing show that he was a highly decorated soldier who received a number of medals and awards for the superior performance of his duties. See Ind. Exh. F. Included among these awards are two [Military Branch] Achievement Medals awarded in October 1997 and October 1998, for service rendered respectively during the periods September 1994 through October 1997, and November 1997 through June 1998. These awards overlap the period when the individual engaged in sporadic heavy drinking on weekends when he was stationed overseas. The October 1998 award recommendation from the individual's commander states, in part, that "[the individual] has distinguished himself by demonstrating superior leadership skills, excellent physical conditioning, and relentless dedication in the performance of his duties." Id.

Second, the individual has been consistent in recounting during his PSI, psychiatric interviews, and at the hearing, that he reduced his drinking following the 1997

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<sup>4/</sup> The Individual's Psychiatrist noted that while the individual was evaluated by the DOE Psychiatrist in April 2005, he did not receive the DOE Psychiatrist's report until April 2006. The Individual's Psychiatrist believes that the individual would have begun attending AA in 2005 if he had been aware of this recommendation in the DOE Psychiatrist's report. See Tr. at 94-95.

incident, and more substantially reduced his drinking after leaving the military in 2000. The individual stated that upon leaving the military he typically drank only once or twice a month and no more than two or three beers on each occasion. DOE Exh. 16 at 94-95, DOE Exh. 6 at 17, Tr. at 47-48. The individual attributes this reduction of alcohol use to the reduced stress level in civilian life, and because shortly after leaving the military he undertook family responsibilities when he began living with his fiancée, their daughter and her son by a previous marriage. Tr. at 58-60.

While the individual conceded that he was intoxicated on the evening of his arrest in December 2003, he reported that prior to that arrest he had been intoxicated no more than once or twice during the preceding year, and he has not been intoxicated since the December 2003 arrest. DOE Exh. 16 at 100; DOE Exh. 6 at 17. In 2004, the individual and his fiancée joined a church and the individual considers himself to be a born-again Christian. Tr. at 81, 113. According to the individual, his religious beliefs and the support of friends at this church led to his decision to stop drinking altogether. DOE Exh. 6 at 19; Tr. at 81. The individual testified that he has consumed no alcohol since two weeks before his interview with the DOE Psychiatrist in April 2005, 15 months prior to the hearing. Tr. at 56. The individual's testimony regarding his abstention is corroborated by the information provided to the DOE Psychiatrist, and by the testimony of the individual's close friend who testified that he has not seen the individual consume any alcohol during this time period. See DOE Exh. 6 at 16; Tr. at 16.<sup>5/</sup>

Following his psychiatric interview with the DOE Psychiatrist, the individual obtained an evaluation by a counselor at an alcohol treatment program. The counselor evaluated the individual in two sessions conducted on May 5, 2005, and May 12, 2005, and administered an alcohol screening test, the Substance Abuse Subtle Screening Inventory (SASSI). See Ind. Exh. H. The counselor concluded that the individual is "a calm, focused, confident, and responsible man, with good control and no current alcohol problems." Id. I similarly found the individual to be sincere and resolute in testifying that: "I feel I had a problem. I don't feel I have a problem now. I know that because of those problems that it has led me to this, and I don't want any more problems in my life, so I don't feel I need alcohol in my life anymore." Tr. at 74-75.

After listening to the testimony of the individual and his witnesses, and upon cross-examination, the DOE Psychiatrist conceded that the evidence in support of his diagnosis of Alcohol Dependence was "weak to moderate" and that: "The evidence for

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<sup>5/</sup> The individual's friend, who conducts security investigations for DOE, also corroborated the individual's testimony regarding his moderate consumption of alcohol since leaving the military. The friend testified that he has never seen the individual intoxicated and that the last time he saw the individual consume any alcohol was a few beers on New Year's Eve 2005. Tr. at 14, 16.

abuse is stronger than the evidence for dependence, but because dependence has a different connotation in terms of your lifetime relationship with alcohol, in my opinion, even though the evidence wasn't as strong, I thought clinically it's better to diagnose him as alcohol dependent." Tr. at 176. The DOE Psychiatrist further explained the critical difference if he had diagnosed the individual with Alcohol Abuse rather than Alcohol Dependence: "[T]here's an important distinction between dependence and abuse, in that alcohol dependence is a trait, and once you're alcohol dependent, you always are alcohol dependent, even if your illness is in sustained full remission for 20 years. Whereas, alcohol abuse is a state. So if he only met the criteria for alcohol abuse in the 90's, he would not have an illness now." Tr. at 144-45. The DOE Psychiatrist explained further at another juncture: "Well, with alcohol abuse, it's really not even applicable to say full remission, you either have it or you don't; and after 12 months of not abusing it, it's a state you simply don't have it any more, you're no longer abusing alcohol." Tr. at 167.

Thus, I find that while the individual suffered from Alcohol Abuse in the mid-1990's during his military service, that diagnosis expired long ago and does not apply to the individual at this time. Moreover, having found that the individual no longer has an active medical diagnosis, I need not defer to the opinion of the DOE Psychiatrist regarding the degree of reformation required of the individual as a past abuser of alcohol habitually to excess. See, e.g., Personnel Security Hearing, Case No. VSO-0537 (September 10, 2003); Personnel Security Hearing, Case No. TSO-0236 (December 22, 2005). In this respect, I find that the individual has sufficiently mitigated the security concerns associated with his past excessive use of alcohol.

In reaching this conclusion, I take into consideration the individual's age at the time of his excessive alcohol use. The individual joined the military three days after his graduation from high school. Tr. at 41. Clearly the individual has matured substantially since the mid-1990's and leaving the military. The individual's present manager testified forcefully in support of the individual at the hearing and presented her personal written statement, as well the individual's performance appraisals, describing the individual as a very dependable, highly rated, knowledgeable and valued employee. See Tr. at 35-37; Ind. Exhs. A through F. The evidence shows that the individual has not been intoxicated since December 2003, and has been abstinent since April 2005. In addition, I find that the individual now has solid career, as well as family, social and religious support systems in his life. I am therefore persuaded that there is minimal probability that the individual will return to any form of habitually excessive or problematic drinking and that he can be trusted to act in a manner consistent with the best interests of national security.<sup>6/</sup>

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<sup>6/</sup> The "Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information," White House, Information Security Oversight Office (December 29, 2005),  
(continued...)

### III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(f), (h) and (j) in denying the individual's request for an access authorization. For the reasons I have described above, I find that the individual has sufficiently mitigated the associated security concerns. I therefore find that granting the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual should be granted an access authorization. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: October 6, 2006

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6/ (...continued)  
state (par. 23, at p. 11) that the factors that could mitigate security concerns regarding excessive alcohol use include:

- (a) so much time has passed, . . . that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of . . . responsible use (if an alcohol abuser);

I find in the present case that these factors work to overcome the security concerns associated with the individual's excessive use of alcohol while in the military.